



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 224 OF 2013

MELSHA MORAA JOHN.....APPELLANT

VERSUS

ELDORET EXPRESS LTD.....1ST RESPONDENT

PHILIP CHANZU.....2ND RESPONDENT

(Being and Appeal from Judgment/Decree by the Honourable P. Mayova, Ag. Senior Resident Magistrate Nakuru, delivered on 26th November 2013)

JUDGMENT

1. This appeal arises from the trial court's judgment delivered on the 26th November 2013 whereof the appellants case was dismissed with costs. That gave rise to this appeal, and basically is premised on the matter of liability(grounds 1 to 5). I have been urged to set aside the judgment and find that the Respondents are wholly liable and uphold Kshs.80,000/= as damages to the appellant.

2. The Appellant was on the material date the 7th August 2010 a fare paying passenger in motor vehicle registration Number KAR 810Y, a Bus owned by the 1st Respondent that was being driven by the authorised driver the 2nd defendant for negligence This vehicle collided with another No. KBB 285W. He placed blame upon the 2nd defendant for negligence from which he sustained injuries, and sough special and general damages from the Respondent, as stated in his plaint dated 1st October 2010 and filed on the 6th October 2010.

The Respondents denied the appellants claim and blamed the driver of motor vehicle registration No. KBB 285W.

4. I have considered the proceedings and judgment of the trial court, and submission filed by both parties in respect of their respective interests.

In his submissions filed on the 6th March 2017 through Mboga & Co. Advocates, it is urged that this appeal rises from a series of cases arising from the same accident involving the Respondents motor vehicle No. KAR 810Y and another No. KBB 285W wherein the appellant was travelling as a fare paying passenger. In all the other cases, the Respondents were held wholly to blame and various awards granted to the plaintiffs by the trial court, and appeals preferred against the trial court's judgment on the matter of *quantum* of damages only though not consolidated.

5. This appeal is against the trial court's findings on **liability only**.

I have had occasion to determine a similar appeal from the trial courts decision, arising from the same road accident. This is **Nakuru HCA No. 80 of 2014 Sicilia K. Thomas -vs- Eldoret Express -vs- Philip Chanzu**.

6. In the said appeal, I reconsidered and re-evaluated the evidence tendered before the trial court and came up with my own findings and conclusions (**Selle -vs- Associated Motor Boat Ltd (1968) EA**) together with the proceedings referred to me for adoption as the defence case. This is in **CMCC No. 1124 of 2010 – Melsha Moraa John -vs- Eldoret Express Ltd & Philip Chanzu**.

7. I delivered my judgment in the **Nakuru HCA No. 80 of 2014** (Supra) on the 20th July 2017.

The issue of liability was ably considered and findings and conclusion made. See the judgment in **HCA No. 80 of 2014 in (2017)e KLR**. A copy appended to this judgment.

8. In the premises, I do not find it necessary to repeat myself on the same issue of liability. The judgment dated **20th July 2017 in Nakuru**

HCA No. 80 of 2014 as far as it concerns the matter of liability (grounds of Appeal No. 1 to 5) shall apply to this appeal. See paragraph 14 thereof, **to the effect that the trial Magistrate's judgment on liability is set aside and substituted with one that the 2nd Respondent was substantially blame for the accident to the extent of 70%.**

9. **On quantum of damages**, the appellant hereof was satisfied with the trial courts award of general damages of Kshs.80,000/=. It is upheld. It shall however be subjected to a 30% reduction leaving a sum of Kshs.56,000/= in favour of the appellant.

This sum shall accrue interest at court rates from the trial court's judgment, the 26th November 2013.

10. The appellant shall have costs of the appeal.

Dated, Signed and Delivered this 21st Day of September 2017.

J.N. MULWA

JUDGE